

(1) Under title VI, such practices are those which:

(i) Exist in a program where a primary objective of the Federal financial assistance is to provide employment; or

(ii) Cause discrimination on the basis of race, color, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

(2) Under section 16 and section 401, such practices include, but are not limited to, employment practices covered by title VI when alleging discrimination on the basis of sex. All employment practices of a recipient or subrecipient of Federal financial assistance subject to section 16 and section 401 are covered employment practices.

(b) *Title VI* refers to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* which prohibits discrimination on the ground of race, color or national origin in programs or activities receiving Federal financial assistance. The definitions set forth in §1040.3 of subpart A to the extent not inconsistent with this subpart, are applicable to and incorporated into this subpart.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§ 1040.13 Discrimination prohibited.

(a) *General.* No person in the United States shall be excluded on the ground of race, color, national origin, or sex (when covered by section 16 or section 401), from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) *Specific discriminatory action prohibited.* A recipient to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex (when covered by section 16 or section 401):

(1) Deny any individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his/her receipt of any dis-

position, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(5) Treat an individual differently from others in determining whether such individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford such individual an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in §1040.14 of this subpart); or

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(c) A recipient, in determining the type of Federal financial assistance (i.e., disposition, services, financial aid, benefits, or facilities) which will be provided under any program, or the class of individuals to whom, or the situations in which the assistance will be provided, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex (when covered by section 16 and section 401) or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex (when covered by section 16 or section 401).

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex (when covered by section 16

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or 401) or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.

(e) For the purpose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

(f) The enumeration of specific forms of prohibited discrimination in this paragraph and in §1040.14 of this subpart does not limit the generality of the prohibition in paragraph (a) of this section.

(g) *Exemptions.* Exclusion from benefits for protected groups. An individual is not to be considered subjected to discrimination by reason of his/her exclusion from benefits limited to individuals of a particular race, color, national origin or sex different from his/hers when the exclusion is provided for or required by Federal law, for example, Federal financial assistance provided exclusively to serve on-reservation Indians.

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

§ 1040.14 Covered employment.

(a) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient of the assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the grounds of race, color, national origin, or sex (when covered by section 16 and section 401) in its employment practices under the program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion or transfer, training, participation in upward mobility projects, rates of pay or other forms of compensation, and use of facilities). This prohibition also applies to programs where the primary objective of the Federal financial assistance is:

(i) To assist individuals through employment to meet expenses incident to

the commencement or continuation of their education or training;

(ii) To provide work experience which contributes to the education or training of the individuals involved;

(iii) To reduce the unemployment of individuals or to help them through employment to meet subsistence needs; or

(iv) To provide employment to individuals who, because of handicaps, cannot be readily absorbed in the competitive labor market. The requirements applicable to construction under any such program are to be those specified in or under part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

(2) In regard to Federal financial assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, national origin, or sex (when covered by section 16 or section 401) in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (a)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(3) Paragraph (a)(1) also applies to covered employment as defined in §1040.12(a)(2).

(b) Enforcement of title VI compliance with respect to covered employment practices is not to be superseded by State or local merit systems relating to the employment practices of the same recipient.

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Subpart C [Reserved]